

**ASSEMBLY BILL**

**No. 461**

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**Introduced by Assembly Member Cook**

February 20, 2007

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An act to amend Section 12430 of, and to add section 12433 to, the Government Code, relating to audits.

LEGISLATIVE COUNSEL'S DIGEST

AB 461, as introduced, Cook. Recovery audits.

Existing law prescribes the duties of the Controller, including auditing all claims against the state and the disbursement of state money, for correctness, legality, and for sufficient provisions of law for payment.

This bill would require the Controller to contract with consultants to provide semiannual audits of state agencies with expenditures exceeding \$50,000,000 in a fiscal year, unless excepted by regulation. The bill would authorize reasonable payment to consultants from recovered overpayments, upon appropriation, including as a percentage of recovery. It would require contracts let under its provisions to apply the same confidentiality provisions to consultants as are applicable to the Controller, state agency, or employees of the Controller or state agency. It would require the Controller to provide copies of the consultants' audit reports to the Department of Finance and the State Auditor, and would require annual reports by the Controller to the Legislature summarizing these audits.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 12430 of the Government Code is amended to read:

12430. Annually, the Controller, the State Auditor, and the Director of the Department of Finance shall each prepare a plan to meet their audit responsibilities. With respect to audits to fulfill the requirements necessary for the receipt of federal funds, the State Auditor shall be primarily responsible for financial audits, and the Director of Finance or the Controller shall be primarily responsible for compliance audits, and the Director of Finance shall be primarily responsible for coordinating state agency internal audits and determining when agencies are required to obtain federally mandated audits. Upon completion of these audit plans, the Controller, State Auditor, and Director of Finance shall meet to review and discuss the plans with the purpose of coordinating their audit efforts to avoid unnecessary duplication and negotiation with federal agencies regarding federally mandated audits.

Subsequent to their review of the audit plans and negotiations with federal agencies if the Controller, the Director of Finance, or the State Auditor determines that the proposed audit plan of the other does not fulfill all audit requirements necessary for the receipt of federal funds, they may expand the scope of their audit of state agencies to meet the additional federal audit requirements. The financial audit report issued by the State Auditor and the compliance audit report issued by the Controller or the Director of Finance or both are intended to fulfill federally mandated audit requirements. These audit reports shall be performed in accordance with the “Standards for Audits of Governmental Organizations, Programs, Activities and Functions,” published by the Comptroller General of the United States, and the standards published by the American Institute of Certified Public Accountants.

Nothing in this section shall be construed to limit, restrict, or otherwise infringe upon the duty of the State Auditor to conduct annual financial audits ~~pursuant to Section 10534~~ or to limit, restrict, or otherwise infringe upon the authority of the Joint Legislative Audit Committee to direct the State Auditor to conduct any audit of state government pursuant to Chapter 6.5 (commencing with Section 8540) of Division 1 of Title 2.

1 *Nothing in this section shall be construed to limit, restrict, or*  
2 *otherwise infringe upon the audits required by Section 12433,*  
3 *which are separate from and in addition to any federally mandated*  
4 *audits except those federally mandated audits that are conducted*  
5 *by contract consultants and as provided in Section 12433.*

6 SEC. 2. Section 12433 is added to the Government Code, to  
7 read:

8 12433. (a) Notwithstanding subdivision (e) of Section 8546.4,  
9 or any other law, the Controller shall contract with one or more  
10 consultants to conduct semiannual recovery audits of payments  
11 made by state agencies to vendors. The audits shall be designed  
12 to detect and recover overpayments to the vendors and to  
13 recommend improved state agency accounting operations.

14 (b) A contract under this section may provide reasonable  
15 compensation for services provided under the contract, including  
16 compensation determined by the application of a specified  
17 percentage of the total amount recovered because of the  
18 consultant's audit activities or recommendations as a fee for  
19 services. A contract may permit or require the consultant to pursue  
20 a judicial action in a court inside or outside this state to recover  
21 an overpaid amount. To allow time for the performance of any  
22 existing state payment auditing procedures, a contract under this  
23 section may not allow a recovery audit of a payment during the  
24 180-day period after the date the payment was made.

25 (c) The Controller or a state agency whose payments are being  
26 audited pursuant to this section may provide a person acting under  
27 a contract authorized by this section with any confidential  
28 information in the custody of the Controller or state agency that  
29 is necessary for the performance of the audit or the recovery of an  
30 overpayment, to the extent the Controller and state agency are not  
31 prohibited from sharing the information under an agreement with  
32 another state or the federal government. A person acting under a  
33 contract authorized by this section, and each employee or agent  
34 of the person, is subject to all prohibitions against the disclosure  
35 of confidential information obtained from the state in connection  
36 with the contract that apply to the Controller or applicable state  
37 agency or an employee of the Controller or applicable state agency.  
38 A person acting under a contract authorized by this section or an  
39 employee or agent of the person who discloses confidential  
40 information in violation of a prohibition made applicable to the

1 person under this subdivision is subject to the same sanctions and  
2 penalties that would apply to the Controller or applicable state  
3 agency or an employee of the Controller or applicable state agency  
4 for that disclosure.

5 (d) The Controller shall require that these semiannual recovery  
6 audits be performed on the payments to vendors made by each  
7 state agency that has total expenditures during a fiscal year in an  
8 amount that exceeds fifty million dollars (\$50,000,000). Each state  
9 agency described by this subdivision shall provide the recovery  
10 audit consultant with all information necessary for the audit. The  
11 Controller may exempt from the mandatory recovery audit process  
12 a state agency that has a low proportion of its expenditures made  
13 to vendors, according to criteria the Controller adopts by regulation  
14 after consideration of the likely costs and benefits of performing  
15 recovery audits for agencies that make relatively few or small  
16 payments to vendors.

17 (e) A state agency shall pay, from recovered moneys  
18 appropriated for the purpose, the recovery audit consultant  
19 responsible for obtaining for the agency a reimbursement from a  
20 vendor. A state agency shall expend or return to the federal  
21 government any federal money that is recovered through a recovery  
22 audit conducted under this section. The state agency shall expend  
23 or return the federal money in accordance with the rules of the  
24 federal program through which the agency received the federal  
25 money.

26 (f) The Controller shall provide copies, including electronic  
27 form copies, of any report received from a consultant contracting  
28 under this section to the Director of Finance and the State Auditor  
29 not later than the seventh day after the date the Controller receives  
30 the consultant's report. Not later than January 1 of each year, the  
31 Controller shall issue a report to the Legislature summarizing the  
32 contents of all reports received under this section during the  
33 immediately preceding fiscal year.

34 (g) For purposes of this section, "overpayment" includes a  
35 duplicate payment made to a vendor for a single invoice, the  
36 amount of a discount available from a vendor that was not applied,  
37 and the amount of any of the following:

38 (1) A late payment penalty that was improperly applied by the  
39 vendor.

- 1     (2) Excess shipping costs that were computed incorrectly or
- 2     incorrectly included in an invoice.
- 3     (3) State sales tax.
- 4     (4) Payment for a good or service the vendor did not provide.

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